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Request for waiver of the immunity of Beata Kempa

European Parliament decision of 9 November 2023 on the request for waiver of the immunity of Beata Kempa (2023/2022(IMM))

(C/2024/2841)

The European Parliament,

— having regard to the request for waiver of the immunity of Beata Kempa, transmitted on 13 December 2022 by the XIV Criminal Division of the Warsaw-Mokotów District Court in connection with criminal proceedings, further to a private prosecution that had been brought, and announced in plenary on 13 February 2023,

— having heard Beata Kempa in accordance with Rule 9(6) of its Rules of Procedure,

— having regard to Articles 8 and 9 of Protocol No 7 on the Privileges and Immunities of the European Union, and Article 6(2) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,

— having regard to the judgments of the Court of Justice of the European Union (CJEU) of 21 October 2008, 19 March 2010, 6 September 2011, 17 January 2013 and 19 December 2019 ([1]),

— having regard to Articles 105(2) and 108 of the Constitution of the Republic of Poland and Articles 7b(1) and 7c(1) of the Polish Act of 9 May 1996 on the performance of the duties of a Member of the Polish Parliament or of the Senate,

— having regard to Rule 5(2), Rule 6(1) and Rule 9 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs (A9-0346/2023),

A. whereas on 13 December 2022 the XIV Criminal Division of the Warsaw-Mokotów District Court transmitted a request for waiver of the parliamentary immunity of Beata Kempa, elected in Poland, that request having been submitted to it by a private individual in response to a post on the Law and Justice Party's Twitter account that allegedly incited national, ethnic, racial and religious hatred; whereas on 17 November 2021 that prosecution had been lodged with the Warsaw-Mokotów District Court by the attorney representing the subsidiary auxiliary prosecutor; whereas the attorney also asked the court to transmit his request for authorisation to bring criminal proceedings against Beata Kempa;

B. whereas the request for waiver of parliamentary immunity was transmitted by the judicial authority in accordance with Rule 9(12) of the Rules of Procedure of the European Parliament; whereas attention is nonetheless drawn to the fact that Rule 9(1) of the Rules of Procedure requires that any request for waiver of immunity be made by 'a competent authority of a Member State', the two concepts not being identical; whereas the meaning of the term 'competent authority of a Member State' is determined by the relevant national legislation and, in the case of Poland, reference should be made to Article 7b(1) of the Polish Act of 9 May 1996 on the performance of the duties of a Member of the Polish Parliament or of the Senate, which stipulates that a request for authorisation to bring criminal proceedings against a Member or Senator for an offence punishable by public prosecution must be made through the Prosecutor-General; whereas in this instance the request was submitted to the Prosecutor-General, who, however, referred it back on the ground that 'private prosecution' also included 'subsidiary prosecution' and that competence to submit a request for waiver of a Member's immunity lay with the court hearing the case;

([1]) Judgment of the Court of Justice of 21 October 2008, *Marra v De Gregorio and Clemente*, C-200/07 and C-201/07, ECLI:EU:C:2008:579; judgment of the General Court of 19 March 2010, *Gollnisch v Parliament*, T-42/06, ECLI:EU:T:2010:102; judgment of the Court of Justice of 6 September 2011, *Patriciello*, C-163/10, ECLI: EU:C:2011:543; judgment of the General Court of 17 January 2013, *Gollnisch v Parliament*, T-346/11 and T-347/11, ECLI:EU:T:2013:23; judgment of the Court of Justice of 19 December 2019, *Junqueras Vies*, C-502/19, ECLI:EU:C:2019:1115.

C. whereas the attorney for the subsidiary auxiliary prosecutor applied to the Court for permission to bring criminal proceedings against Beata Kempa, among others, for an act falling under Article 256(2) of the Polish Criminal Code;

D. whereas on 17 October 2018 an election clip entitled 'Safe Local Government' was posted on social media on the Law and Justice Party's Twitter account in the context of the municipal elections held in Poland on 21 October 2018; whereas dissemination was facilitated by, among others, Beata Kempa; whereas the post allegedly incited hatred against Muslim immigrants;

E. whereas Beata Kempa is one of a group of individuals who find themselves in a similar situation of being charged with the alleged offence in question, the only difference being that she currently enjoys immunity as a Member of the European Parliament; whereas it should therefore be borne in mind that Beata Kempa is not the only person liable to be charged in the case in question;

F. whereas Beata Kempa was elected to the European Parliament at the elections of 26 May 2019;

G. whereas the alleged offence does not concern opinions expressed or votes cast by Beata Kempa in the performance of her duties as a Member of the European Parliament within the meaning of Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union; whereas, in this case, the request for waiver of immunity concerns facts which relate to activities of a local nature prior to the acquisition of the status of, and consequently immunity as, a Member of the European Parliament;

H. whereas the purpose of parliamentary immunity is to protect Parliament and its Members from legal proceedings in relation to activities carried out in the performance of parliamentary duties and which cannot be separated from those duties;

I. whereas Article 9 of Protocol No 7 on the Privileges and Immunities of the European Union provides that Members of the European Parliament enjoy, in the territory of their own State, the immunities accorded to members of their parliament;

J. whereas, pursuant to Article 105(2) and Article 108 of the Constitution of the Republic of Poland of 2 April 1997, as well as to Article 7(1), (2) and (4), Article 7b(1) and Article 7c(1) of the Act of 9 May 1996 on the performance of the duties of a Member of the Polish Parliament or of the Senate ([2]), a Member of the European Parliament cannot be interviewed as a suspect or be held criminally liable without the consent of the European Parliament;

K. whereas Parliament cannot assume the role of a court, and whereas, in a waiver of immunity procedure, a Member cannot be regarded as a defendant ([3]);

L. whereas, in this case, Parliament has found no evidence of *fumus persecutionis*, i.e. factual elements which indicate that the intention underlying the legal proceeding may be to damage a Member's political activity and thus the European Parliament;

1. Decides to waive the immunity of Beata Kempa;

2. Instructs its President to forward this decision and the report of its committee responsible immediately to the competent authorities of the Republic of Poland and to Beata Kempa.

([2]) Official Journal 2022.1339, codified version.

([3]) Judgment of the General Court of 30 April 2019, *Briois v Parliament*, T-214/18, ECLI:EU:T:2019:266.